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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**MAC'S CONVENIENCE
STORES LLC**

UST NO. 198601005

**ADMINISTRATIVE
CONSENT ORDER
2012-UT- 05**

TO:

**David L. Hatchett
Hatchett & Hauck LLP
111 Monument Circle, Suite 301
Indianapolis, IN 46204-5124**

**Mac's Convenience Stores LLC
Corporation Service Company
505 5th Avenue, Suite 729
Des Moines, IA 50309**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Mac's Convenience Stores LLC (Mac's) hereby agree to the following Administrative Consent Order (Order). Mac's agrees to pay an administrative penalty of \$10,000 to the Department for underground storage tank (UST) violations. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Collins
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8879

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 503219-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (I.A.C.) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 I.A.C. 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Mac's hereby agree to the following statement of facts:

1. Mac's is the registered operator of a facility containing five USTs located at 1012 Maple Street, Burlington, Iowa. This facility, also known as Circle K (store #6601), is a convenience store engaged in the retail sale of gasoline.
2. Mac's uses statistical inventory reconciliation (SIR) as its required monthly leak detection method for this station. The November 2010 SIR report for a 10,000 gallon tank identified as #06601001 (the tank) showed a failing result. Subsequently, the January, March, April, and May 2011 tests for the tank had failing results while the June 2011 test for the tank showed an inconclusive result, requiring reporting of a suspected release to the Department, and immediate investigation to determine the cause of the failing results.
3. On July 20, 2011, Mac's had Tanknology, Inc. conduct a tightness test of the tank. This test failed. American Environmental Corporation (American Environmental), a consultant for Mac's, reported a suspected release to the Department.
4. In response to the July 20, 2011 suspected release report, the Department instructed Mac's, through American Environmental, to empty the tank, submit leak detection records, and perform a site check. Mac's complied with these instructions. Following this required check of the monitoring wells, the Department received a UST Release Notification form via email from American Environmental stating that free product had been identified in an existing monitoring well.
5. Prior to the July 20, 2011 tightness test and discovery of free product in the monitoring well, Mac's had not reported a suspected or actual release to the Department, or completed an appropriate investigation to confirm the release.
6. At the request of the Department, Mac's provided inventory records for the tank for the period August 2010 through July 2011. These records show an estimated loss of 5,000-10,000 gallons of gasoline during that time period.

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7. The extent of the contamination caused by this release has yet to be fully determined; however, to date the petroleum plume has been demonstrated to extend under residential housing and has been found intermittently seeping into a low-lying wet area down-gradient from the site. Mac's is performing free product recovery and other remediation efforts, and additional assessment and remediation may be required at a future date. Mac's has taken appropriate steps to respond to the release since reporting it on July 20, 2011, and has installed additional inventory monitoring equipment at the station.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. chapters 135 and 136.
2. Iowa Code section 455B.471(5) defines an "operator" as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." Mac's has been the operator of the above referenced facility at all times relevant to this Order.
3. "Petroleum" is a "regulated substance" as defined in Iowa Code sections 455B.471(7) and (8). "Release" is defined in Iowa Code section 455B.471(9).
4. The Commission has adopted rules related to the reporting of suspected releases of petroleum. Subrule 135.6(1) states that an operator must report a suspected release to the Department within 24 hours when any of the following conditions are present:
 - b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and
 - c. Monitoring results from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

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(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

5. Mac's violated 567 I.A.C. 135.6(1) by failing to notify the Department in a timely matter of a suspected release.

6. In addition, 567 I.A.C. 135.6(3) requires an operator to immediately investigate any suspected release of a regulated substance. The operator must conduct a "system test" or conduct a "site check" within seven days of the suspected release and then take further action as warranted by the results of those tests.

7. Mac's violated 567 I.A.C. 135.6(3) by failing to investigate the above stated suspected release(s) in a timely manner. An investigation in compliance with this subrule was not conducted until the July 20, 2011 tightness test.

V. ORDER

THEREFORE, the Department hereby orders and Mac's agrees to the following:

1. Mac's shall pay to the order of the Iowa Department of Natural Resources an administrative penalty of \$10,000 within 30 days of receipt of this Order.

2. Mac's shall continue its existing free product recovery and assessment efforts and shall undertake all such additional remediation, assessment, monitoring, and/or reporting activities as may be required by statute or administrative rule with respect to this release.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code sections 455B.476 and 455B.109 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10.

ECONOMIC BENEFIT: Mac's may have benefitted economically by not paying for an investigation in a timely manner. However, in light of the resulting loss of product

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and the required remediation activities, the Department is exercising its enforcement discretion and is not pursuing this penalty amount.

GRAVITY: This is a very large release and it is of the type that the relevant UST rules were designed to prevent or reduce the severity of. Mac's failure to timely report a suspected release and failure to timely investigate the suspected release are serious violations that contributed to a large petroleum release in a residential neighborhood. For this factor, \$2,500 is assessed for each violation for a total of \$5,000.

CULPABILITY: Mac's is an experienced operator of convenience stores and is expected to know the rules governing its business. Given that all operators must conduct leak detection, and that Mac's was doing so, it is not plausible that it was unaware of the release reporting and/or investigation requirements, and Mac's does not allege that it was unaware of these requirements. Furthermore, the mitigation of this petroleum release was delayed by Mac's failure to discover the release in a timely manner. There is no indication that Mac's attempted to hide the release. Mac's asserts that the failure to timely discover the suspected release reflected a breakdown in its internal SIR data review procedure. Mac's has indicated that it has taken steps to remedy this breakdown. For this factor, \$2,500 is assessed for each violation for a total of \$5,000.

The total penalty calculation from the above three categories is \$10,000.

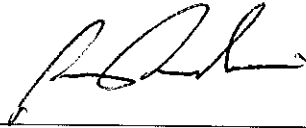
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.476, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Mac's. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Section IV of this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477.

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Dated this 11th day of July, 2012



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31st day of July, 2012

Mac's Convenience Stores LLC; Tom Collins; Aaron Brees; V(B)